

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT.

OAH Case No. 2014110582

ORDER DENYING MOTION TO
DISMISS

On November 5, 2014, Student's parent on behalf of Student filed a request for due process hearing (complaint), naming the San Mateo-Foster City School District as the respondent.

On November 18, 2014, San Mateo filed a motion to dismiss the third issue from Student's complaint and to dismiss certain proposed resolutions from the complaint. OAH has not received any response to the motion.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

Student's third issue states:

Did the District deny Student a FAPE by failing to include the Parent in the development of the referral packet and failing to remove and/or correct inaccurate, false, and misleading information from the referral packet?

According to Student's complaint, the "referral packet" contained information sent to various residential facilities to help them evaluate if Student should attend their programs.

San Mateo contends that this issue is outside of the jurisdiction of OAH because it addresses alleged inaccuracies in pupil records. San Mateo points out that there is a separate statutory scheme for correcting inaccuracies in pupil educational records. (See Ed. Code, § 49070.) San Mateo does not, however, argue that the separate statutory scheme is an exclusive remedy. In addition, the challenged allegation asserts that San Mateo failed to include Student's parent in the development of the referral packet, which does not appear to be an issue cognizable under Education Code section 49070.

With respect to the remedies, San Mateo argues that Student now attends school in a different public school district and is no longer enrolled in the San Mateo district. Therefore, any remedies asking for prospective relief are improper.

San Mateo's arguments, while they may be relevant at hearing, are not a basis for a motion to dismiss. Student's third issue alleges a denial of FAPE caused by San Mateo's actions. OAH has jurisdiction to hear a denial of FAPE claim.

If San Mateo is arguing that Student's alleged facts do not constitute a denial of FAPE, then San Mateo is essentially bringing a motion for summary adjudication of issues. However, special education law does not provide for a summary judgment or summary adjudication procedure. Instead, special education law contemplates a hearing on the issues raised by a parent. Further, San Mateo's allegation that Student is no longer enrolled in its district is a factual assertion that might bring a variety of responses.

Likewise, there is no need to dismiss any of the proposed resolutions at this time. The remedy in a due process proceeding is a matter within the discretion of the administrative law judge hearing the case. (See *School Committee of the Town of Burlington v. Department of Education* (1985) 471 U.S. 359 [105 S.Ct. 1996; 85 L.Ed.2d 385].) Any proposed resolutions in Student's complaint which ask for improper remedies can be addressed by the ALJ during the prehearing conference or hearing.

ORDER

Sam Mateo's motion to dismiss is denied. The matter shall proceed as scheduled.

DATE: November 26, 2014

/s/

SUSAN RUFF

Administrative Law Judge

Office of Administrative Hearings